IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MURIEL COLLINS, natural guardian of WILLIE FOXWORTH, a minor,	:	**CIVIL ACTION**
Plaintiff,	:	
v.	:	
CHICHESTER SCHOOL DISTRICT, et al.,	:	
Defendants.	:	**NO. 96-6039**

M E M O R A N D U M A N D O R D E R

AND NOW, on this 18th day of July, 1997, upon consideration of the motion of defendants Chichester School District, et al.[1] to dismiss or, in the alternative, for more definite statement pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(e) respectively (Document No. 14)[2] and the reply of plaintiffs thereto, and having found and concluded that:

> 1. Plaintiff, Muriel Collins ("Collins"), natural guardian and mother of Willie Foxworth ("Foxworth"), a minor, filed a complaint on September 3, 1996 and filed an amended complaint on November 8, 1996. Plaintiff brings this action pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq.; 42 U.S.C. §§ 1981, 1983; the Fourteenth Amendment to the Constitution of the United States; Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. Ann. § 951, et seq. (West 1982); and related claims under Pennsylvania and Delaware state tort law of libel and slander, seeking damages and other equitable relief.
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> Currently before the Court is the motion to dismiss by School Defendants who argue that the amended complaint is so vague and ambiguous and lacking in allegations sufficient to state a prima facie case under the relevant legal theories presented that they cannot reasonably frame a responsive pleading. I agree.

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1. The moving defendants are Chichester School District ("School District"); Chichester School Board ("School Board"); Philip Voshell ("Voshell") in his official and individual capacity as Principal of the Chichester Middle School; Salvatore Illuzzi ("Illuzzi") in his official and individual capacity as Superintendent of Chichester School District; Samuel Ferrante ("Ferrante") in his official and individual capacity as Assistant to the Superintendent; and Cynthia Bottomley ("Bottomley") in her official and individual capacity as teacher at Chichester Middle School (collectively referred to as "School Defendants"). Additional defendants who are not part of this motion include Upper Chichester Township ("Township") and Meadow Wood Hospital ("Hospital"), a private hospital located in New Castle, Delaware.

The Hospital filed a motion to dismiss (Document No. 20) which the Court has resolved in a separate Order on same date. The Township filed an answer to the amended complaint on November 26, 1996.

2. I will proceed under the standard for a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

The purpose of pleadings is to provide proper notice to defendants. See Frazier v. SEPTA, 785 F.2d 65, 68 (3d Cir. 1986). Although plaintiff need not set out in detail the facts upon which the claim is based, she must allege sufficient facts and must state all the material elements for recovery under the relevant legal theory. Hicks v. Arthur, 843 F. Supp. 949, 954 (E.D. Pa. 1994); see also Kauffman v. Moss, 420 F.2d 1270, 1275-76 (3d Cir.) ("[C]omplaints in civil rights cases must be specifically pleaded in order to avoid a motion to dismiss."), cert. denied, 400 U.S. 846 (1970).

Although the amended complaint initially sets out the relevant legal theories, it frequently fails to specify which particular allegation violates which legal theory and it fails to identify relevant material elements for a cause of action. Accordingly, I find that the amended complaint fails to provide School Defendants with adequate notice of the misconduct alleged against them.

Despite the inartful drafting of the amended complaint, there may exist valid claims. Therefore, I will grant plaintiff leave to file a second amended complaint to correct deficiencies as to the claims that have been dismissed without prejudice only.

In the following paragraphs, I will provide guidance to plaintiff, though such guidance is typically reserved for pro se plaintiffs;

2. It appears, although it is far from clear, that Collins brings this lawsuit to enforce the civil rights of her son and her rights as his parent and natural guardian. Amended Complaint ¶ 3. "[A] litigant may only assert his own constitutional rights or immunities [and] one cannot sue for the deprivation of another's civil rights." O'Mally v. Brierley, 477 F.2d 785, 789 (3d Cir. 1973) (citing McGowan v. Maryland, 366 U.S. 420, 429 (1961) (internal quotations omitted)); see also Boykin v. Bloomsburg Univ. of Pa., 893 F. Supp. 378, 399 (M.D. Pa. 1995), aff'd, 91 F.3d 122 (3d Cir. 1996), cert. denied, 117 S. Ct. 739 (1997); Estate of Cooper By and Through Cooper v. Leamer, 705 F. Supp. 1081, 1086 (M.D. Pa. 1989); Boyce v. Rizzo, 78 F.R.D. 698, 701 (E.D. Pa. 1978). A parent may assert a claim for a violation of her civil rights if the claim that is alleged to have violated the civil rights of her child actually violated her civil rights as well. See Estate of Cooper, 705 F. Supp. at 1086-87. Collins alleges no violation of her civil rights by any of the School Defendants,[3] only violations of the rights of her son. Therefore, I find no basis alleged for a cause of action by Collins. Accordingly, I will dismiss the amended complaint without prejudice to the right of Collins to file a second amended complaint, with a corrected caption, if necessary, that clearly states which claims are brought by Collins on behalf of her minor son Foxworth and which claims, if any, are brought by Collins in her own right;

3. Federal Rule of Civil Procedure 10(b) provides that all averments in a claim shall be made in numbered paragraphs, each limited as far as practicable to a single set of circumstances. Each claim must be stated in a

3. The only alleged violation of the rights of Collins is found in paragraphs 18 and 19 of the amended complaint against the Township Police Department.

separate count whenever separation clarifies presentation of the claim. Fed. R. Civ. P. 10(b). I find that plaintiff has not complied with Rule 10(b);[4]

4. Plaintiff alleges that both the School District and the School Board deprived Foxworth of his constitutional rights pursuant to § 1983. Amended Complaint ¶¶ 13-16. Local governments may be sued directly under § 1983 where the alleged unconstitutional action is part of an official policy or custom of the governmental agency. Monell v. Department of Soc. Servs., 436 U.S. 658, 690-91 (1978).

For purposes of § 1983, school districts, school boards, superintendents, and principals are considered to be local governments or governments employees and are therefore subject to the similar liability as local governments under the Monell rule. See Stoneking v. Bradford Area Sch. Dist., 882 F.2d 720. 730 (3d Cir. 1989), cert. denied, 493 U.S. 1044 (1990); Long v. Board of Educ. of City of Philadelphia, 812 F. Supp. 525, 531 (E.D. Pa.), aff'd, 8 F.3d 811 (1993). Therefore, if the facts will permit, plaintiff must allege a policy, practice or custom of discrimination by a school district and school board in order to properly state a claim. See Stoneking, 882 F.2d at 730. Although plaintiff alleges a discriminatory policy by the School Board and School District causing a constitutional deprivation, no facts are alleged to support this allegation. Reply Mem. of Plaintiff to School Defendants at 6. Accordingly, I will dismiss without prejudice the § 1983 claim against School District and School Board;

5. To the extent that there are remaining claims under Title VI, § 1981, § 1983, the Fourteenth Amendment and the PHRA against the remaining School Defendants, I find that plaintiff fails to allege facts sufficient to state causes of action under these relevant legal theories. Accordingly, I will dismiss without prejudice all claims pursuant to these legal theories against the remaining School Defendants. See NAACP v. Medical Ctr., Inc., 657 F.2d 1322, 1332 (3d Cir. 1981) (Title VI); Board of Managers of the Glen Mills Sch. v. West Chester Areas Sch. Dist., 838 F. Supp. 1035, 1042 (E.D. Pa. 1993) (Section 1981), aff'd in part and rev'd in part, 52 F.3d 313 (3d Cir. 1995);[5] Long, 812 F. Supp at 532 (Section 1983); Walker v. Marriott Facilities Management, CIV. A. No. 95-3273, 1995 WL 481511, at *2 (E.D. Pa. Aug. 11, 1995) (PHRA);

6. School Defendants raise the defense of qualified immunity against the civil rights claims of plaintiff. Public school officials are entitled to qualified immunity against constitutional claims when their "conduct did 'not violate

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4. Plaintiff states in her Memorandum that "Defendants are capable of determining whether a particular claim can impose liability only on an entity, individuals or both . . . . Additionally, Defendants are able to research each claim to determine what damages are available against the particular defendants." Reply Mem. of Plaintiff to School Defendants at 14. Federal Rule of Civil Procedure 8(a)(2) places the burden squarely on plaintiff to clearly state a claim against a specific defendant or defendants with a clear statement of relief sought. School Defendants should not be left to hazard a guess or infer which alleged violations correspond to which defendants.

5. Plaintiff fails to allege a single fact to support her allegation that defendants acted with discriminatory intent. See Flagg v. Control Data, 806 F. Supp. 1218, 1223 (E.D. Pa. 1992) (stating that plaintiff must prove discriminatory intent to establish a claim pursuant to § 1981), aff'd, 998 F.2d 1002 (3d Cir. 1993), cert. denied, 510 U.S. 1052 (1994). "Conclusory allegations of generalized racial bias do not establish discriminatory intent." Id.

clearly established statutory or constitutional rights of which a reasonable person would have known.'" Stoneking, 882 F.2d at 726 (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)); Long, 812 F. Supp. at 531. In light of the aforementioned deficiencies of the amended complaint, I find that it is inappropriate to rule at this time on the defense of qualified immunity of School Defendants since plaintiff may re-cast the allegations to meet the law and these objections of the School Defendants;

7. School Defendants contend that plaintiff failed to state a prima facie case for libel and slander pursuant to 42 Pa. Cons. Stat. Ann. § 8343(a)(1)-(7) (West 1982). See Owedia v. Tribune-Review Publ'g Co., 599 A.2d 230, 233 (Pa. Super. Ct. 1991) (prima facia case for libel and slander). I find that plaintiff fails to allege facts sufficient to meet the burden of proving an action for libel and slander. Accordingly, I will dismiss without prejudice the libel and slander claim against Illuzzi, Ferrante, Voshell and Bottomley;

8. School Defendants raise defenses of immunity against libel and slander claims brought under Pennsylvania tort law.[6] Local agencies are immune from suit except when the damages would be recoverable under common law or statute and the injury was caused by the negligent acts of the agencies or their employees acting within the scope of their official duties relating to one of the eight exceptions to immunity found in 42 Pa. Cons. Stat. Ann. § 8542(b) (West 1982) of the statute.[7] 42 Pa. Cons. Stat. Ann. § 8542(a)(1)-(2) (West 1982); see Malia v. Monchak, 543 A.2d 184, 188 (Pa. Commw. Ct. 1988).

School districts and school boards are local agencies for purposes of governmental immunity. See Petula v. Mellody, 631 A.2d 762, 765 (Pa. Commw. Ct. 1993) ("School districts are immune from suit in a cause of action sounding in defamation."); Kielbowick v. Ambridge Area Sch. Bd., 627 A.2d 276, 278 (Pa. Commw. Ct. 1993) (school boards). Defamation does not fall within the list of exceptions to immunity. See 42 Pa. Cons. Stat. Ann. § 8542(b)(1)-(8) (West 1982); Petula, 631 A.2d at 765. Therefore, I find that defendants School District and School Board cannot be held liable under Pennsylvania tort law. Accordingly, I will dismiss with prejudice the School District and School Board from the libel and slander claims.

Superintendents and principals are considered employees of a local agency and are subject to governmental immunity under §§ 8545-46. See Malia, 543 A.2d at 188. If any action is brought against an employee of a local agency for damages arising from, or reasonably related to his office or duties, the employee may assert defenses that are available at common law or that the employee had a reasonable good faith belief that the conduct in

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6. Specifically, defendants School District, School Board, Illuzzi, Ferrante, Voshell and Bottomley raise the defense of official immunity from tort liability under the Political Subdivision Tort Claims Act, 42 Pa. Cons. Stat. Ann. § 8541, et seq. (West 1982). These same defendants, except for the School District, also raise the defense of "high public official immunity" under Pennsylvania common law. See Lindner v. Mollan, 677 A.2d 1194 (Pa. 1996) (articulating the standard for "high public official immunity and to whom it applies").

7. The eight exceptions are: (1) operation of a motor vehicle; (2) care, custody or control of personal property; (3) care, custody control of real property; (4) trees, traffic control and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) care, custody or control of animals. 42 Pa. Cons. Stat. Ann. § 8542(b)(1)-(8) (West 1982); see Malia v. Monchak, 543 A.2d 184, 188 n.8 (Pa. Commw. Ct. 1988).

> question was authorized by law or that the conduct was within the policymaking discretion of the employee. 42 Pa. Cons. Stat. Ann. § 8546(1)-(3) (West 1982); see also Malia, 543 A.2d at 188. However, in any action against a local agency or an employee thereof, immunity under §§ 8542, 8546 is abrogated when the alleged wrongful act "constituted a crime, actual fraud, actual malice or willful misconduct . . . ." 42 Pa. Cons. Stat. Ann. § 8550; see also Malia, 543 A.2d at 188.
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> Because plaintiff may, in an amended complaint, state a cognizable claim for libel and slander against individual defendants Illuzzi, Ferrante, Voshell and Bottomley, the Court will not reach the immunity issue as to the individual defendants at this time;
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> 9. After a fair review of the amended complaint, I find that the plaintiff's allegations fail to provide adequate notice to School Defendants of the claims alleged against them. "To accomplish the duel objectives of weeding out frivolous cases and keeping federal courts open to legitimate civil rights claims, courts should allow liberal amendment of civil rights complaints under [Federal Rule of Civil Procedure] 15(a)." Rotolo v. Borough of Charleroi, 532 F.2d 920, 923 (3d Cir. 1976). Because it appears that the claims of the plaintiff may not be frivolous, I will dismiss the complaint without prejudice[8] and allow plaintiff leave to file a second amended complaint. If the facts and Federal Rule of Civil Procedure 11 permit, plaintiff may file a second amended complaint stating factual averments of each defendant's conduct which support claims under relevant theories of law; and

it is accordingly **ORDERED** that the motion to dismiss is **GRANTED** and the complaint is hereby **DISMISSED**.

IT IS FURTHER ORDERED that claim of libel and slander is **DISMISSED WITH PREJUDICE** against Chichester School District and Chichester School Board.

IT IS FURTHER ORDERED that provided the facts and Federal Rule of Civil Procedure 11 will allow, plaintiff is granted **LEAVE TO AMEND** and file and serve a second amended complaint in accordance with this **ORDER** no later than August 4, 1997.

IT IS FURTHER ORDERED that, if plaintiff files a second amended complaint, Upper Chichester Township shall file a timely answer or responsive pleading to the second amended complaint.

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8. The libel and slander claim against Chichester School District and Chichester School Board are dismissed with prejudice.

LOWELL A. REED, JR., J.

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MURIEL COLLINS, natural guardian of WILLIE FOXWORTH, a minor,	:	**CIVIL ACTION**
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v.	:	
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Defendants.	:	**NO. 96-6039**

O R D E R

AND NOW, on this 18th day of July, 1997, upon consideration of the motion of defendant Meadow Wood Hospital ("Hospital") to dismiss or, in the alternative, a motion for more definite statement pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(e) respectively (Document No. 20)[9] and the reply of plaintiffs thereto, and having on this same date granted plaintiff leave to file a second amended complaint to reflect the dismissal of claims against Chichester School District, et al., and recognizing that the second amended complaint of plaintiff may alter the claims against Hospital, it is hereby accordingly **ORDERED** that the motion to dismiss claim of plaintiff is **DENIED WITHOUT PREJUDICE** to the express right of defendant Meadow Wood Hospital to file a motion to dismiss the second amended complaint to the extent that the facts and Federal Rule of Civil Procedure 11 will allow.

9. I will proceed under the standard for a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

IT IS FURTHER ORDERED that the issues raised in the within motion by Meadow Wood Hospital are preserved for purposes of filing a motion to dismiss in the future.[10]

LOWELL A. REED, JR., J.

10. I note that the parties did not adequately brief and argue whether the Delaware or Pennsylvania statute of limitations applies and any necessary conflict of laws analysis. If this issue should arise in the future, I expect the parties to submit sufficient legal memoranda.